

REMARKS

Claims

By the instant Amendment, claims 67 and 68 have been added. A Fee Transmittal in respect of the extra claims fee for claims 67 and 68 is enclosed. Claims 19 to 28 and 34 to 68 are pending in the case. No new matter has been entered.

Claim Restriction - 35 U.S.C. § 121

In the Office Action, the Examiner required that the invention be restricted under 35 U.S.C. 121 to one of two groups of claims as follows:

Group I: claims 19 to 28, 38 to 56, 64, and 66, drawn to a method of treatment of the spine; and

Group II: claims 34 to 37, 57 to 63, and 65, drawn to a method of distracting adjacent spinal facets of a healthy facet joint.

The restriction is respectfully traversed. It is noted that MPEP 806.05(c) states that restriction of inventions on the basis of combination/subcombination is proper if reasons exist for insisting upon the restriction; i.e., separate classification, status, or field of search. In the present case, the claim groups have been classified in class 606, and only in different subclasses (61 and 105). It is submitted the subject matter of both groups is related such that both fall within the same field of search, and that searching both groups would not present an undue burden to the Examiner. Further, extensive searches in the field of the invention have already been carried out by the Examiner. For at least these reasons, withdrawal of the restriction requirement and reconsideration are respectfully requested.

To be fully responsive to the Office Action, Applicants elect group I, claims 19 to 28, 38 to 56, 64, and 66.

Additional Claims

It is submitted that newly added claims 67 and 68 are allowable over the cited art.

Applicants submit that amendment and/or cancellation of claims during prosecution of the instant application is not to be construed as acquiescence to any of the objections/rejections set forth in the instant Office Action or any previous Office Action, and were done solely to expedite prosecution of the application. Applicants submit that claims were not added, amended, or cancelled during prosecution for reasons related to patentability. Applicants reserve the right to pursue the claims as originally filed, or similar claims or cancelled claims, in subsequent patent applications.

Please charge any further fee that may be required to Deposit Account No. 17-0110.

Should the Examiner wish to discuss this reply and amendment, a telephone call to the undersigned agent at 613-533-2342 would be welcomed.

Respectfully submitted,



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